

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

E. I. du PONT de NEMOURS & COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2371

Decision No. CU 3677

Counsel for claimant:

Gerald E. Kandler, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$460,669.74, was presented by E. I. du PONT de NEMOURS & COMPANY based upon the asserted loss of payment for merchandise shipped to Cuba, and the loss of certain personal property in Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against property, including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated,

intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

An authorized officer of claimant has certified that claimant was organized under the laws of Delaware, that at all pertinent times more than 50% of claimant's outstanding capital stock was owned by nationals of the United States, and that as of October 14, 1960 and March 31, 1967, 98.94% and 99.06%, respectively, of claimant's outstanding capital stock was owned by nationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record includes copies of invoices, bills of lading, bank letters, extracts from claimant's records, as well as statements of claimant's officials concerning the items of property claimed herein. Claimant states that it has received neither the funds representing payments made to local banks by consignees nor any payments for the outstanding debts due from the other Cuban consignees.

The following information concerning shipments made by claimant to Cuban consignees, supported by the evidence of record, shows: (a) with respect to the paid accounts, the consignees, the dates on which payments were made to Cuban banks by such consignees or acknowledged by the banks, and the amounts thereof; and (b) with respect to the unpaid accounts, the consignees, the invoice or due dates, and the amounts thereof. Claimant has certified that none of the consignees was an American concern. It is noted that the Cuban peso was on a par with the United States dollar.

Paid Accounts

<u>Consignee</u>	<u>Date Paid or Acknowledged</u>	<u>Amount</u>
Luis Alvarez	Jan. 25, 1960	\$ 259.59
Cabrera Barrio y Cia.	Mar. 8, 1960	6,660.24
Cia. Goodrich Cubana, S.A.	Sept. 30, 1960	346.88
	Oct. 24, 1960	352.94
	Nov. 15, 1960	356.49
	Nov. 15, 1960	356.49
Cia. Interamericana de Cosméticos, S.A.	Dec. 15, 1960	585.86
Distribuidora Van Dick, S.A.	Nov. 28, 1960	518.62
	Nov. 28, 1960	250.05
Fabrica Nacional de Pinturas, S.A.	Oct. 20, 1960	3,982.00
Laboratorios Gravi, S.A.	Mar. 20, 1961	238.91
Papelera Moderna, S.A.	Nov. 2, 1960	3,204.23
Plásticos Industriales Extrusos, S.A.	Sept. 26, 1960	696.11
	Oct. 3, 1960	11,180.00
	Oct. 8, 1960	697.73
	Feb. 21, 1961	107.78
Empaques Celloprint, S.A.	June 15, 1960	14,939.06
Industrios Cello-Pak de Cuba, S.A.	Dec. 8, 1960	1,800.32
Laboratorios Lex, S.A.	Sept. 29, 1960	521.79
Laboratorios Mirassou, S.A.	Oct. 4, 1960	501.83
Emery Lippai	Oct. 12, 1960	128.16
Emilio Loredó	Dec. 31, 1959	1,121.55
Miguel Lopez y Cia. S. en C.	Dec. 2, 1960	850.19
Importadora Maler, S.A.	May 17, 1960	3,545.25
Alberto Behar y Cia.	June 14, 1960	1,626.64
Fabrica de Medias California, S.A.	Nov. 28, 1960	3,505.78
Sucs de Luis M. Caballero	Oct. 12, 1960	182.83
Casa Daubar, S.A.	Mar. 4, 1960	2,973.65
Cia. Textil Doble Via, S.A.	Mar. 23, 1960	1,497.18
Editorial Carteles, S.A.	Aug. 11, 1960	2,952.27
Ellis Hosiery Mills of Cuba	Sept. 20, 1960	1,411.46
	Sept. 21, 1960	4,591.66
	Sept. 29, 1960	3,673.01

<u>Consignee</u>	<u>Date Paid or Acknowledged</u>	<u>Amount</u>
Encaje Cubano, S.A.	Aug. 22, 1960	\$ 4,960.10
Fabrica de Medias Corona, S.A.	Apr. 4, 1960	1,233.91
Gold Seal Hosiery, S.A.	Sept. 6, 1960	2,068.55
	Sept. 23, 1960	2,637.95
Industrial Sabrina, S.A.	Oct 7, 1960	4,110.37
Redes Textil Co., S.A.	Dec. 21, 1960	4,827.68
Superloft Textiles, S.A.	Oct. 7, 1960	11,665.67
Universidad de Oriente Santiago de Cuba	Aug. 26, 1960	189.89
Agencias Unidas de Representaciones, S.A.	Oct. 26, 1960	<u>592.63</u>
Total		<u>\$107,903.30</u>

Unpaid Accounts

<u>Consignee</u>	<u>Invoice Date</u>	<u>Due Date</u>	<u>Amount</u>
Cia. de Pinturas Rivarra, S.A.	Sept. 19, 1960		\$ 122.50
	Sept. 30, 1960		25.29
Cia. Goodrich Cubana, S.A.	Sept. 23, 1960		445.50
	Oct. 5, 1960		50.89
Cia. Operadora Vista Alegre, S.A.		Aug. 27, 1959	449.35
		Sept. 4, 1959	36.08
		Dec. 8, 1959	15.01
		Dec. 15, 1959	10.16
		Dec. 24, 1959	29.98
		Dec. 28, 1959	11.21
Cia. Petrolera Shell de Cuba, S.A.	May 12, 1959		67.00
	May 20, 1959		15.17
	May 21, 1959		471.00
	May 27, 1959		29.73
Fabrica Nacional de Pinturas, S.A.	Nov. 27, 1959		5,475.00
Industrias Consolidadas de Matanzas, S.A.	Dec. 17, 1958		67.05
	Feb. 20, 1959		211.20
	Mar. 2, 1959		15.33
	Mar. 4, 1959		211.20
	Mar. 10, 1959		15.33
	Apr. 21, 1959		52.19

<u>Consignee</u>	<u>Invoice Date</u>	<u>Due Date</u>	<u>Amount</u>
Drogueria Sarra	Nov. 20, 1959 Aug. 31, 1960		\$ 257.04 62.64
Empaques Celloprint, S.A.	May 4, 1959 Oct. 21, 1959 Sept. 16, 1960		5,520.92 17,311.88 174.00
Rene Gonzalez Tigera	June 7, 1960 Sept. 21, 1960		358.44 356.69
Miguel Lopez y Cia. S. en C.	Oct. 17, 1960		87.68
Productos Feden, S.A.	Mar. 14, 1960		372.63
Tejidos Soltex, S.A.	Sept. 7, 1960 Sept. 14, 1960 Sept. 26, 1960 Sept. 26, 1960	Mar. 14, 1960	3,708.06 642.50 35.67 7,507.88 4,928.75
Minera Rogoca, S.A.	Feb. 8, 1960		638.68
Ribbon Fabric Co. of Cuba, S.A.	Aug. 8, 1960 Aug. 15, 1960 Aug. 19, 1960 Sept. 29, 1960 Oct. 6, 1960		1,440.00 177.89 1,876.47 3,847.50 109.79
U. S. Rubber Co., Ltd.	Oct. 15, 1959 Nov. 11, 1959		760.00 49.47
L. Westpahl	Sept. 19, 1960 Sept. 30, 1960		8,674.20 558.58
Juan Alba y Cia.	Sept. 28, 1959 Oct. 5, 1959 Oct. 24, 1959 Dec. 8, 1959 Dec. 17, 1959		1,074.47 111.44 2,274.36 174.49 5.00
Azze Hosiery Mills, S.A.	Oct. 19, 1960		8,174.86
Consolidated Railroads of Cuba	May 11, 1959 Aug. 5, 1959 Aug. 5, 1959 Aug. 6, 1959 Sept. 15, 1959 Sept. 15, 1959		1,235.67 286.20 32.64 1,791.36 729.58 16.56
Dragones Hosiery Co., S.A.	Oct. 20, 1960 Oct. 20, 1960		3,347.55 3,814.80
Elliott Knitting Mills, Inc. of Cuba	Oct. 19, 1960		578.26
Intercontinental Hotels Corp. of Cuba, S.A.	Aug. 21, 1959		635.04

<u>Consignee</u>	<u>Invoice Date</u>	<u>Due Date</u>	<u>Amount</u>
Rafael Oriol	Oct. 17, 1960		\$ 528.12
Haik Donikian Papazian	Oct. 19, 1960		2,409.58
Miguel y Bicardi, S.A.		Nov. 27, 1960	8,713.19
Silvestre Padron y Cia.	Oct. 19, 1960		2,439.75
Mamei Sala	Oct. 19, 1960		3,472.83
Star Knitting Mills, Inc.		Feb. 3, 1960	1,123.55
Superloft Textiles, S.A.	Sept. 15, 1960		17,438.36
Textilera Tricana, S.A.	Oct. 19, 1960		8,920.44
	Oct. 19, 1960		9,002.71
Gia. Thomas F. Turull, S.A.	Apr. 14, 1960		1,113.38
	June 6, 1960		4,687.95
	Aug. 16, 1960		55.00
	Aug. 22, 1960		2,816.50
	Aug. 25, 1960		421.92
	Sept. 13, 1960		14,808.00
	Sept. 30, 1960		417.50
	Sept. 30, 1960		57.00
	Sept. 30, 1960		27.40
	Sept. 30, 1960		2,015.24
	Oct. 13, 1960		110.35
	Oct 18, 1960		47.61
		Nov. 13, 1960	9,271.55
		Dec. 7, 1960	476.99
		Dec. 11, 1960	649.00
		Dec. 11, 1960	1,951.73
		Dec. 12, 1960	2,009.04
		Jan. 15, 1961	1,217.08
Concordia Textil, S.A.	Jan. 22, 1958		21.36
		Sept. 18, 1958	10,707.53
		Sept. 18, 1958	8,169.00
		Sept. 27, 1958	10,828.72
		Sept. 30, 1958	15,699.71
		Sept. 30, 1958	12,774.55
		Oct. 8, 1958	12,452.30
		Oct. 25, 1958	2,110.23
		Dec. 16, 1958	13,560.58
		Dec. 26, 1958	13,622.01
		Jan. 31, 1959	19,746.82
Zippy Products Co. of Cuba	Sept. 21, 1959		23.49
	Oct. 8, 1959		46.11
		Nov. 1, 1959	289.50
		Nov. 10, 1959	55.00
		Nov. 24, 1959	171.00
		Dec. 1, 1959	579.00
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	Total		\$308,624.49
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The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter, the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba in the contractual rights of the claimants, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

Accordingly, the Commission finds that claimant sustained a loss in the aggregate amount of \$416,527.79 as a result of intervention by the Government of Cuba. In the absence of evidence to the contrary, the Commission finds that the losses occurred on the days after payment was received or acknowledged by the local banks, or the due dates where shown, or 30 days from the invoice dates; except that with respect to those items that would otherwise be deemed lost prior to September 29, 1959, the effective date of Law 568, the loss is found to have occurred on September 29, 1959.

On the basis of evidence of record, the Commission finds that claimant owned other items of personal property, such as containers, cylinders and explosive magazines which were in the possession of claimant's customers in Cuba. The Commission further finds that these items of property, having an aggregate value of \$44,141.95, were taken by the Government of Cuba on January 15, 1960.

Accordingly, the Commission concludes that claimant sustained losses within the meaning of Title V of the Act in the aggregate amount of \$460,669.74.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the dates of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered, as follows:

<u>FROM</u>	<u>ON</u>
September 29, 1959	\$131,179.77
October 15, 1959	746.14
October 21, 1959	23.49
October 28, 1959	1,074.47
November 5, 1959	111.44
November 8, 1959	46.11
November 15, 1959	760.00
November 21, 1959	17,311.88
November 24, 1959	2,445.36
December 1, 1959	579.00
December 8, 1959	15.01
December 11, 1959	49.47
December 15, 1959	10.16
December 20, 1959	257.04
December 24, 1959	29.98
December 27, 1959	5,475.00
December 28, 1959	11.21
January 1, 1960	1,121.55
January 8, 1960	174.49
January 15, 1960	44,141.95
January 17, 1960	5.00
January 26, 1960	259.59
February 3, 1960	1,123.55
March 5, 1960	2,973.65
March 8, 1960	638.68
March 9, 1960	6,660.24
March 14, 1960	3,708.06
March 21, 1960	238.91
March 24, 1960	1,497.18
April 5, 1960	1,233.91
April 14, 1960	372.63
May 14, 1960	1,113.38
May 18, 1960	3,545.25
June 15, 1960	1,626.64
June 16, 1960	14,939.06
July 6, 1960	4,687.95
July 7, 1960	358.44
August 12, 1960	2,952.27

August 23, 1960	\$ 4,960.10
August 27, 1960	189.89
September 7, 1960	2,068.55
September 8, 1960	1,440.00
September 15, 1960	177.89
September 16, 1960	55.00
September 19, 1960	1,876.47
September 21, 1960	1,411.46
September 22, 1960	7,408.16
September 24, 1960	2,637.95
September 25, 1960	421.92
September 27, 1960	696.11
September 30, 1960	4,257.44
October 1, 1960	346.88
October 4, 1960	11,180.00
October 5, 1960	501.83
October 7, 1960	642.50
October 8, 1960	15,776.04
October 9, 1960	697.73
October 13, 1960	15,118.99
October 14, 1960	35.67
October 15, 1960	17,438.36
October 16, 1960	174.00
October 19, 1960	8,796.70
October 21, 1960	4,338.69
October 23, 1960	445.50
October 25, 1960	352.94
October 26, 1960	12,436.63
October 27, 1960	592.63
October 29, 1960	3,847.50
October 30, 1960	3,101.01
November 3, 1960	3,204.23
November 5, 1960	50.89
November 6, 1960	109.79
November 13, 1960	9,381.90
November 16, 1960	712.98
November 17, 1960	615.80
November 18, 1960	47.61
November 19, 1960	34,998.43
November 20, 1960	7,162.35
November 27, 1960	8,713.19
November 29, 1960	4,274.45
December 3, 1960	850.19
December 7, 1960	476.99
December 9, 1960	1,800.32
December 11, 1960	2,600.73
December 12, 1960	2,009.04
December 16, 1960	585.86
December 22, 1960	4,827.68
January 15, 1961	1,217.08
February 22, 1961	<u>107.78</u>

Total

\$460,669.74

CERTIFICATION OF LOSS

The Commission certifies that E. I. du PONT de NEMOURS & COMPANY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Four Hundred Sixty Thousand Six Hundred Sixty-nine Dollars and Seventy-four Cents (\$460,669.74) with interest thereon at the rate of 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

JUN 4 1969

Leonard v. B. Sutton
Leonard v. B. Sutton, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

Sidney Goldberg
Sidney Goldberg, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. §531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 [1967].)